

SENATE BILL 2968
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 47, Part 25,
Part 13, relative to certain franchise agreements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25, is amended by deleting Part 13 in its entirety and by substituting instead Sections 2 through 15 of this act as new Part 13.

SECTION 2.

For the purposes of this part, unless the context otherwise requires:

(1) "Current model" means a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;

(2) "Current net price" means the price listed in the supplier's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;

(3) "Retailer" means any person, firm or corporation engaged in the business of selling and retailing farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, attachments or repair parts and shall not include retailers of petroleum products;

(4) "Inventory" means farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments and repair parts;

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(5) "Supplier" means any manufacturer, wholesaler, wholesale distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler or distributor; and

(6) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation.

SECTION 3.

(a) No supplier, directly or through an officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a retail agreement without good cause. "Good cause" means failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement if such requirements are not different from those imposed on other retailers similarly situated in this state. In addition, good cause exists whenever:

(1) There has been a closeout on the sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;

(2) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

(3) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;

(4) The equipment retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;

(5) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the supplier; or

(6) The retailer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier consents to an action described in this subsection.

(b) Except as otherwise provided herein, a supplier shall provide a retailer with at least ninety (90) days' written notice of termination, cancellation or nonrenewal of the retail agreement and a sixty (60) day right-to-cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where cancellation is enacted due to market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice shall state all reasons constituting good cause for action. The notice is not required if the reason for termination, cancellation or nonrenewal is a violation under the provisions of subsection (a) of this section.

SECTION 4. Whenever any retailer enters into an agreement, evidenced by a written or oral contract, with a supplier wherein the retailer agrees to maintain an inventory of parts and to provide service and the contract is terminated, then the supplier shall repurchase the inventory as provided in this part. The retailer may keep the inventory if the retailer desires. If the retailer has any outstanding debts to the supplier, then the repurchase amount may be set off or credited to the retailer's account.

SECTION 5. No supplier shall:

(1) Coerce any retailer to accept delivery of equipment, parts or accessories which the retailer has not ordered voluntarily, except as required by any applicable law, or unless parts or accessories are safety parts or accessories required by the supplier;

(2) Condition the sale of additional equipment to a retailer upon a requirement that the retailer also purchase other goods or services, except that a supplier may require the retailer to purchase those parts reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area;

(3) Coerce a retailer into refusing to purchase equipment manufactured by another supplier; or

(4) Terminate, cancel or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of a natural disaster, including a sustained drought or high unemployment in the dealership market area, labor dispute or other similar circumstances beyond the retailer's control.

SECTION 6. The supplier shall repurchase that inventory previously purchased from such supplier and held by the retailer on the date of termination of the contract. The supplier shall pay one hundred percent (100%) of the current net price of all new, unsold, undamaged and complete farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment and attachments, and ninety percent (90%) of the current net price on new, unused and undamaged and superseded repair parts. The supplier shall pay the retailer ten percent (10%) of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The supplier shall have the option of performing the handling, packing and loading in lieu of paying the ten percent (10%) for these services. The supplier shall purchase at its amortized value any specific data processing hardware and software and telecommunications equipment that the supplier required the retailer to purchase within the past five (5) years. The supplier shall also repurchase, at seventy-five percent (75%) of the net cost, specialized repair tools purchased in the previous three (3) years

and, at fifty percent (50%) of the net cost, specialized repair tools purchased in the previous four (4) through six (6) years pursuant to the requirements of the supplier and held by the retailer on the date of termination. Such specialized repair tools must be unique to the supplier's product line and must be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this part at its agreed depreciated value, provided such equipment is in new condition and has not been abused.

SECTION 7. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the supplier. Annually, at the end of each calendar year, after termination or cancellation, the retailer's reserve account for recourse, retail sale or lease contracts shall not be debited by a supplier or lender for any deficiency unless the retailer or the heirs of the retailer have been given at least seven (7) business days notice by certified or registered U.S. mail, return receipt requested, of any proposed sale of the equipment financed and an opportunity to purchase the equipment. The former retailer or the heirs of the retailer shall be given quarterly status reports on any remaining outstanding recourse contracts. As the recourse contracts are reduced, any reserve account funds shall be returned to the retailer or the heirs of the retailer in direct proportion to the liabilities outstanding.

SECTION 8. The provisions of this part shall not require the repurchase from a retailer of:

- (1) Any repair part which, because of its condition, is not resalable as a new part;
- (2) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (3) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment and attachments which are not current models or which are not in new, unused, undamaged, complete condition, provided that the

equipment used in demonstrations or leased as provided in Section 6 shall be considered new and unused;

(4) Any repair parts which are not in new, unused, undamaged condition;

(5) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment or attachments which were purchased more than thirty-six (36) months prior to notice of termination of the contract; or

(6) Any inventory which was ordered by the retailer on or after the date of termination of the contract.

SECTION 9. If any supplier fails or refuses to repurchase and pay the retailer for any inventory covered under the provisions of this part within sixty (60) days after shipment of such inventory, such supplier shall be civilly liable for one hundred percent (100%) of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney fees, court costs and interest on the current net price computed at the legal interest rate from the sixty-first day after date of shipment.

SECTION 10.

(a) In the event of the death of the retailer or the majority stockholder of a corporation operating as a retailer, the supplier shall, at the option of the heir or heirs, repurchase the inventory from the heir or heirs of the retailer or majority stockholder as if the supplier had terminated the contract. The heir or heirs shall have one (1) year from the date of the death of the retailer or majority stockholder to exercise their options under this part. Nothing in this part shall require the repurchase of any inventory if the heir or heirs and the supplier enter into a new contract retail agreement to operate the retail dealership.

(b) A supplier shall have ninety (90) days in which to consider and make a determination upon a request by a family member to enter into a new retail agreement to operate the retail dealership. As used herein, "family member" means a spouse, child,

son-in-law, daughter-in-law or lineal descendant of the dealer or principal owner of the dealership. In the event the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for non-acceptance. This section does not entitle an heir, personal representative or family member to operate a dealership without the specific written consent of the supplier.

(c) Notwithstanding the provisions of this section, in the event that a supplier and a dealer have previously executed an agreement concerning succession rights prior to the dealer's death and, if such agreement has not been revoked, such agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

SECTION 11. The provisions of this part shall not be construed to affect in any way any security interest which the supplier may have in the inventory of the retailer, and any repurchase hereunder shall not be subject to the provisions of the bulk sales law. The retailer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment. Failure of the supplier to provide a representative within sixty (60) days shall result in automatic acceptance by the supplier of all returned items.

SECTION 12.

(a) A retailer may bring an action for civil damages in a court of competent jurisdiction against any supplier found violating any of the provisions of this part, and may recover damages sustained as a consequence of the supplier's violations together with all costs and attorneys' fees.

(b) The retailer shall be entitled to injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances of the retail agreement. The remedies in this section are in addition to any other remedies permitted by law.

SECTION 13. The provisions of this part shall apply to all contracts and shall apply to all retail agreements in effect which have no expiration date and are a continuing contract, and shall apply to all other contracts entered into, amended, extended, ratified or renewed after May 16, 1977. The provisions of this part shall apply to and be binding upon all suppliers, all successors in interest or purchasers of assets or stock of suppliers, and all receivers, trustees or assignees of suppliers. Any contractual term restricting the procedural or substantive rights of a retailer under this part, including a choice of law or choice of forum clause, is void.

SECTION 14.

(a) The provisions of this part shall not be waivable in any contract, and any such attempted waiver shall be null and void.

(b) If any provision or item of this part or the application thereof is held invalid, it shall not affect other provisions, items or applications of this part which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this part are hereby declared severable.

SECTION 15. Tennessee Code Annotated, Title 47, Chapter 25, Part 15, shall not apply to retailers as defined in this part.

SECTION 16. This act shall take effect July 1, 1998, the public welfare requiring it.